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THE RELATION OF THE MAJORITY STOCKHOLDERS TO THE CORPORATION. — The fiduciary relation to the corporation of its officers and agents is well established. How far stockholders are in a similar position is as yet a subject of conflicting opinion. As between himself and other shareholders, or the corporation, it is clear that a mere stockholder is not a fiduciary.[1] When, however, he combines with others to form a majority, his dealings with the corporation are subjected to severe scrutiny.[2]

If the majority act for themselves, without the help of their powers as majority, they are free to deal at arm's length with the corporation.[3] Hence they may buy in corporate property at a public sale, even if the consideration is inadequate.[4] But when they use their power of control to affect the corporate business or property, it must be recognized they owe a certain duty to the corporation. Because of this and of the hard cases which sometimes arise, the courts, in their natural desire to redress admitted wrongs, have been led to declare that the majority sustain a fiduciary capacity.[5] This is a convenient but strained analogy. It is scarcely compatible with the recognized right of the majority to control the affairs of the corporation, not as a delegated but as a principal power.[6] And it is conceded that

[1] Hanchett *v.* Blair, 100 Fed. 817.

[2] Of course equity should not interfere with the legal rights of the majority to determine ordinary questions of internal management. Foss *v.* Harbottle, 2 Hare 461.

[3] Russell *v.* Rock Run, etc., Co., 184 Pa. 102.

[4] See Price *v.* Holcomb, 89 Iowa 123; Rothchild *v.* Memphis, etc., R. R. Co., 113 Fed. 476, 480; 7 Thompson, Corp., §§ 8601 *et seq.*

[5] Miner *v.* Belle Isle Ice Co., 93 Mich. 97, 116; Bias *v.* Atkinson, 63 S. E. 395 (W. Va.); 9 Colum. L. Rev. 357. It is often said that the relation is that of a "quasi-trust," or "quasi-fiduciary." 1 Beach, Corp., § 70. But no court has as yet satisfactorily defined the meaning of either phrase.

[6] *Cf.* Price *v.* Holcomb, *supra*. *Contra*, Meeker *v.* Winthrop Iron Co., 17 Fed. 48.

a sale of the corporation's property, voted to themselves by the majority, is valid if the price is fair,[7] whereas a sale by a fiduciary to himself is voidable irrespective of the adequacy of the consideration.[8] But obviously the majority should not be allowed to seriously impair the rights or imperil the undertaking of the corporation: equity will not permit them to appropriate the corporate assets at the expense of the minority,[9] or to wreck the corporation.[10] The sound doctrine on which these cases may be rested is the same that restrains a life tenant without impeachment from committing equitable waste — equity prevents the unconscionable use of a legal right where it threatens irreparable harm.[11] A recognition of this basis, it is believed, would obviate many strained analogies to a fiduciary relation that cannot fairly be said to exist,[12] and result in a more uniform understanding of the true situation.

Many cases arise from profits made by the majority at the expense of the corporation through a dummy board of directors. If the majority stock is acquired by a competing corporation which elects its own directors,[13] and through them conducts operations detrimental to its rival, the minority are given relief.[14] The directors owe strict fiduciary duties, and such a confederation to work for the interests of the majority as apart from those of the corporation is in the nature of a conspiracy in breach of trust.[15] Theoretically this principle seems to extend to all cases of improper influence, and, if so interpreted, would remedy the more pronounced evils of corporate manipulation, without impairing the legitimate use of their rights by the majority.[16] As a matter of practice the difficulty of determining what did influence the directors in their action has prevented full recognition of the rule, leaving the courts in most cases to fall back on the principles applied where the majority profit by transactions that involve no breach of trust.[17] But in a recent case where the majority bought up at discount outstanding claims against the corporation, recovery on them was reduced to the amount of the actual purchase price, on the intervention of minority stockholders, because the former had prevented the corporation, by their control of the directors, from itself accepting an opportunity to buy the claims at dis-

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7 Rio Grande Ry. Co. *v.* Armendiaz, 5 Tex. Civ. App. 449.

8 Newcomb *v.* Brooks, 16 W. Va. 32. Unless the beneficiaries consent. Gorder *v.* Plattsmouth Canning Co., 36 Neb. 548.

9 Menier *v.* Hooper's Tel. Works, 9 Ch. App. 350; 2 Bigelow, Frauds, 645.

10 De Neufville *v.* N. Y. & N. Ry. Co., 81 Fed. 10.

11 No authority has been found expressly saying this. But it is submitted to be the true solution and the one which many courts have unconsciously used as the basis of the equitable jurisdiction.

12 It is said that by assuming control the majority shoulder the duty of the corporation to its shareholders, and are therefore fiduciaries. Rothchild *v.* Memphis, etc., R. Co., *supra*. But the obligation is not that of a trust or agency, since the right of reimbursement would end limited liability. It is simply that of corporation and stockholder, but that the majority assume it by taking control implies that the corporation is the majority. The majority always control, and have the right to control from the nature of the enterprise.

13 This it has the right to do. Jones *v.* Green, 129 Mich. 203.

14 Mumford *v.* Ecuador Development Co., 111 Fed. 639.

15 1 Morawetz, Priv. Corp., 2 ed., § 529. See Rogers *v.* N. C. & St. L. Ry. Co., 91 Fed. 299, 312–314.

16 Any attempt by the majority to ratify their unconscionable conduct would seem a proper case for drawing the veil to prevent the fraud. *Cf.* Woodroof *v.* Howes, 88 Cal. 184. But see Beatty *v.* N. W. Transp. Co., 12 App. Cas. 589.

17 Jones *v.* Green, *supra*; Ervin *v.* Ore. Ry. & Nav. Co., 20 Fed. 577, 27 Fed. 625.

count.[18] *Young* v. *Columbia Land, etc., Co.*, 99 Pac. 936 (Ore.). The result upholds what seems the better doctrine despite the difficulties of its application.[19]

THE EFFECT OF NON-COMPLIANCE BY A FOREIGN CORPORATION WITH LOCAL STATUTORY REQUIREMENTS. — The dictum of Chief Justice Taney in *Bank of Augusta* v. *Earle*[1] that "a corporation can have no legal existence out of the boundaries of the sovereignty by which it was created," is the basis of the law of foreign corporations in this country. Thus a corporation is foreign in every state except that of incorporation, and is never present even where it conducts a foreign business. This principle, which results from emphasizing the fictitious nature of the corporation, has been rigidly followed despite actual conditions; even, for instance, when the foreign incorporation was effected for the very purpose of doing business in another state and by citizens of that state.[2] Equally well settled is the law that a state may exclude a foreign corporation from transacting business within its territory,[3] and *à fortiori* that a state may impose terms and conditions upon which alone business may be conducted therein.[4] But a foreign corporation may actually transact business without compliance or after merely partial compliance with the state laws: the problem then arises as to what rights may be predicated on such unauthorized action.

Many state statutes are explicit as to the results of non-compliance by the foreign corporation, and a strict construction of these statutes leaves little for judicial decision.[5] Thus an Oregon statute requiring a declaration of purpose, payment of fee, and appointment of an agent to accept service expressly declares that a foreign corporation shall not transact business, and cannot bring suit in the state or federal courts until these terms have been complied with. Under this enactment it was recently held that a foreign corporation neglecting to comply with these provisions could not recover on a contract made within the state. *Cyclone Mining Co.* v. *Baker Light & Power Co.*, 165 Fed. 996 (Circ. Ct., D. Ore.). In view of the express language of the statute the court refused to accede to the contention that the defendant was estopped to show the lack of compliance.[6]

Many statutes, however, are silent as to the results of non-compliance; and as to what rights a guilty foreign corporation may assert under such a statute the authorities appear to be irreconcilable; for the courts have frequently failed to base their decisions on any fundamental proposition of law applicable to the situation. Such a case resolves itself into the assertion of corpo-

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[18] Some of the plaintiffs were also directors, but it does not appear that all were.

[19] Woodroof *v.* Howes, *supra*; Pearson *v.* Concord R. R. Co., 13 Am. & Eng. R. R. Cas. 94, 102; Thompson *v.* Meisser, 108 Ill. 359.

[1] 13 Pet. (U. S.) 519.

[2] Demarest *v.* Flack, 128 N. Y. 205. Foreign corporations have been held present for purposes of taxation and service of process. See Southern Cotton Oil Co. *v.* Wemple, 44 Fed. 24; St. Clair *v.* Cox, 106 U. S. 350, 355; 6 Thompson, Corps., § 7994.

[3] Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28.

[4] Paul *v.* Virginia, 8 Wall. (U. S.) 168.

[5] In this connection it must be noted that even when the contracts of a foreign corporation are expressly declared void, the courts have unanimously held that the corporation must discharge the contractual obligation attempted to be entered into. Watertown Fire Ins. Co. *v.* Rust, 141 Ill. 85.

[6] *Cf.* Blodgett *v.* Lanyon Zinc Co., 120 Fed. 893.